

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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In the matter of )

TOLL FREE SERVICE ACCESS CODES )

CC Docket No. 95-155

To: The Commission

EX PARTE OR LATE FILED

DECLINED TO FILE

**WRITTEN EX PARTE PRESENTATION  
AND MOTION TO DEFER 877 IMPLEMENTATION**

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**A Division of New England 800 Company**

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## SUMMARY

ResponseTrak<sup>®</sup> Call Centers ("ResponseTrak"), a division of New England 800 Company, herein offers a solution to the so-called "vanity number" issue. ResponseTrak further asks the Commission to defer the opening of the 877 toll free service access code ("SAC") pending consideration and final resolution of this issue.

The Commission correctly acknowledges that public recognition is essential to the commercial use of many toll free numbers, and that there is significant danger of public confusion if a highly visible number in one SAC (e.g., 888-CALL FCC) is "replicated" in another SAC (e.g., 877-CALL FCC). The Commission has previously approached this problem by attempting to define "vanity number," with the goal of devising a means to protect subscriber investment then new toll free SACs are opened. But the Commission has conceded that "[d]efining vanity numbers is a daunting undertaking. Some numbers are valued for their mnemonic equivalent, while other numbers are valued for, among other things, the fact that their digits are easily memorized." *Report and Order*, 11 FCC Rcd at 2498 (1996).

Today, nearly two and one-half years later, no solution has been found. Meanwhile, the 800 SAC is nearly depleted, the 888 SAC has been open for two years, and the 877 SAC is scheduled to open in less than two months. ResponseTrak now offers a solution. The "Enterprise" solution, so named because it is based on the historical "Enterprise Number," an early AT&T forerunner to today's toll free service, is simple, effective, efficient, and equitable.

"Vanity number" is a misnomer and misdirects focus on the makeup and format of specific numbers, which is actually irrelevant to the problem at hand. It is the way in which a toll free number is used, not whether the number itself is a so-called "vanity," that gives rise to a commercial interest needing regulatory protection. The public recognition factor is triggered when a toll free number is published to the public at large, on an indiscriminate basis, to facilitate many-to-one communications. While such a number *may* be a so-called "vanity

number," *any* toll free number used by a commercial subscriber in this public many-to-one communications mode should be afforded replication protection.

A significant number of toll free numbers, however, do not require such protection because they are not used in a manner where public recognition is required. Toll free numbers used for most personal, residential, and access (e.g., to pager or voice mail) applications facilitate private, one-to-one or few-to-one communications. Rather than publishing the number to the public at large, the number is privately communicated to a finite group of potential callers specifically designated by the subscriber. Public recognition is irrelevant because the subscriber personally gives the number to each potential caller. Further, numbers used in this private mode may replicate toll free numbers being used in public may-to-one mode without significant risk of harm to the public user's interest.

The solution, therefore, is to segregate toll free numbers into only two different sets of SACs based on this very broad distinction between the ways in which the numbers are used. The Enterprise solution would reserve the 800 and 888 SACs for public, many-to-one (or Enterprise) applications, and the 877 SAC for private, one-to-one or few-to-one applications. Future SACs would be allocated according to projected demand. Replication protection would be necessary only within the SACs reserved for Enterprise use, thereby facilitating an efficient utilization of number resources.

A detailed description of the Enterprise solution, the specifics of implementation, and the public policy, legal, and equitable justifications for it are presented herein.

In the matter of )  
 ) CC Docket No. 95-155  
TOLL FREE SERVICE ACCESS CODES )  
  
To: The Commission

ResponseTrak® Call Centers (“ResponseTrak”), a division of New England 800 Company, by its attorney and pursuant to Section 1.1206(b)(1) of the Commission’s Rules and Regulations, 47 C.F.R. § 1.1206(b)(1), hereby submits this written presentation in the above-captioned proceeding. Further, pursuant to Section 1.41 of the Rules, 47 C.F.R. § 1.41, ResponseTrak moves the Commission to defer deployment of further toll free service access codes (“SACs”), including the scheduled opening of 877, pending consideration of this presentation and the final adoption of a permanent and comprehensive toll free number policy.

1. The above-captioned proceeding was commenced for the stated purpose of developing a regulatory policy providing for the fair, equitable, and orderly allocation of toll free numbers, and to ensure a smooth and orderly transition when new toll free SACs are implemented so that existing service is not disrupted and the availability of toll free numbers is not interrupted. That was nearly two and one-half years ago, but the Commission still has not resolved some extremely important fundamental issues. Meanwhile, the number supply from the 800 SAC is virtually depleted, the 888 SAC has been open for nearly two years, and the 877 SAC is scheduled to open on April 5, 1998, less than two months from now.

2. It is imperative that the Commission defer the implementation of new toll free SACs, including the scheduled opening of 877, until it has resolved several outstanding issues.

Two matters in particular must be addressed and decided before opening any new toll free SACs: (1) the so-called "vanity number" issue, and (2) reconsideration of the anti-hoarding and anti-broking provisions contained in Section 52.107 of the Rules. It is counterproductive to adopt policies designed to govern the opening of new toll free SACs only after (800, 888, and 877) or possibly more SACs are already opened and heavily populated. The Commission's statutory mandate to act in the public interest requires that the opening of any new toll free SACs be deferred pending expedited consideration and resolution of these matters.

3. Accordingly, and for the reasons described more fully herein, ResponseTrak hereby asks the Commission to take the following specific actions:

- Immediately defer the opening of the 877 SAC.
- Expedite consideration of the outstanding issues in CC Docket No. 95-155.
- Stop using the term "vanity numbers" to describe the issue of protecting incumbent toll free subscribers.
- Adopt the Enterprise / Communicator solution proposed by ResponseTrak.

## **II. ABOUT RESPONSETRAK CALL CENTERS**

4. ResponseTrak Call Centers is a division of New England 800 Company, founded in 1983. The Company is a Maine-based developer and provider of custom call center services and systems. With a staff of over 125 persons, the company provides inbound call center services to more than 30 clients, 24 hours a day, seven days a week. The company's call centers receive and process over 500,000 transactions annually, and is growing at a rate which will soon double that volume.

5. The issues under consideration in this docket are critical to the long-term interests of ResponseTrak and thousands of other businesses, both large and small. On July 21, 1997, New England 800 Company submitted filed comments in this proceeding in response to the Commission's Public Notice, released July 2, 1997, seeking further guidance on the so-called

“vanity number” issue. The company there recommended, inter alia, (a) that the Commission stop using the term “vanity number” to refer to call brands, (b) that the Commission reserve the 800 and 888 SACs for the exclusive use of businesses that reasonably demonstrate that the proposed use will be primarily for communications from customers and prospects on a “many-to-one” basis, and (c) that the Commission reserve one or more separate toll free SACs for “one-to-one” or “few-to-one” applications such as pagers, cellular phones, residential phones, and the like. In this presentation, ResponseTrak offers a specific proposal for a comprehensive regulatory implementation of these recommendations.

### **III. BACKGROUND AND STATUS OF CC DOCKET NO. 95-155**

6. The Commission initiated this proceeding in October of 1995, in response to the rapid depletion of 1-800 toll free numbers, and in anticipation of the opening of future toll free SACs (888, 877, etc.). The stated purpose of the proceeding was “to assure that, in the future, toll free numbers are allocated on a fair, equitable, and orderly basis [and also] to assure that the transition period during which the numbers within one toll free code are approaching full consumption and another code is being introduced is smooth, without disruption of service to existing customers or interruption in the availability of toll free numbers for new customers.” *Notice of Proposed Rule Making (“NPRM”)*, 10 FCC Rcd 13692, 13692 (1995).

7. The Commission has considered a wide variety of issues in this proceeding, including the problems that arise when numbers are opened in new SACs that correspond to well known numbers or brands in the 800 SAC. For example, if an entity other than 1-800-FLOWERS were to obtain 1-888-FLOWERS, a number of problems arise, including, but not limited to, consumer confusion, misdials resulting in unwanted toll charges for the 888 holder and lost revenue for the 800 holder, erosion or even infringement of trademarks, etc. The Commission has referred to this as the “vanity number” issue. *See NPRM*, 10 FCC Rcd at 13701-13704.

8. In January of 1996, the Commission adopted an interim measure, limited "only ... to assuring the 888 SAC can be opened to the general public on March 1, 1996." *Report and Order*, 11 FCC Rcd 2496, 2498 (Com. Car. Bur. 1996). Responsible Organizations ("RespOrgs") were directed to conduct polls to determine which 800 numbers their subscribers may want replicated in the 888 SAC. The 888 numbers thus identified were to be marked as "unavailable" in the SMS database pending final resolution of the vanity issue. 11 FCC Rcd at 2496. Having adopted that interim relief, the Commission refused to stay the March 1, 1996, opening of the 888 toll free SAC. *Order*, 11 FCC Rcd 5401 (Com. Car. Bur. 1996).<sup>1</sup>

9. In April of 1997, the Commission adopted rules and policies regarding toll free numbers, including Rule Section 52.107 which prohibits the "hoarding" of toll free numbers. *Second Report and Order and Further Notice of Proposed Rulemaking (Second Report and Order)*, 12 FCC Rcd 11162 (1997). The new regulation defines hoarding as "the acquisition by a toll free subscriber from a Responsible Organization of more toll free numbers than the toll free subscriber intends to use for the provision of toll free service [and] also includes number brokering, which is the selling of a toll free number by a private entity for a fee." 47 C.F.R. § 52.107(a). The new rule further provides: "Routing multiple toll free numbers to a single toll free subscriber will create a rebuttable presumption that the toll free subscriber is hoarding or brokering toll free numbers." 47 C.F.R. § 52.107(a)(3). Petitions for reconsideration of this and other aspects of the *Second Report and Order* are currently before the Commission.

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<sup>1</sup> On October 24, 1997, the Commission released the *Third Report and Order and Third Report and Order*, in combined CC Docket Nos. 92-237 (Administration of North American Numbering Plan) and 95-155, \_\_\_ FCC Rcd \_\_\_, 9 Comm. Reg. (P & F) 1259 (1997). As to CC Docket No. 95-155 the Commission found that the current structure for administration of the toll free number database is not compliant with Section 251(e)(1) of the Communications Act, 47 U.S.C. § 251(e)(1), and therefore directed the North American Numbering Council to evaluate the matter and make a recommendation as to an appropriate administrator.



10. In July of 1997, still not having come to any permanent resolution of the so-called "vanity number" issue, the Commission issued a public notice stating: "The record on the *NPRM* is almost two years old. At this point, the industry is preparing to deploy the next toll free code in 1998. We seek, therefore, to refresh the record ... on issues associated with the treatment of vanity numbers, both with 888 as well as numbers in future toll free codes." Comments on that public notice were received and are still under review and consideration by Commission staff.

#### **IV. REDEFINING THE ISSUE: PROTECT BUSINESS INVESTMENT, NOT "VANITY"**

##### **A. Stop Using the Term "Vanity Numbers"**

11. Throughout this proceeding, the Commission has struggled to find an appropriate policy governing what it has referred to as "vanity" numbers. The Commission has found, however, that defining what it means by "vanity number" has been as difficult as developing a workable regulatory policy. At the outset, the Commission formulated the issue as follows:

A vanity number is a telephone number for which the letters associated with the number's digits on a telephone handset spell a name or word of value to the number holder. ... For purposes of this *NPRM*, vanity numbers also include any numbers in which the holders have a particular interest, be it economic, commercial, or otherwise. ... As new toll free codes become available, a question arises as to whether the current holder of an 800 vanity number should have a right of first refusal or other priority on the equivalent number drawn from a new toll free code. Companies may have a financial interest in being able to reserve these equivalent vanity numbers because of their high visibility, consumer recognition, and the confusion that may ensue .... Some 800 number holders may have invested substantial resources in advertising the number and establishing a reputation for it.

*NPRM*, 10 FCC Rcd at 13701-13702. After studying the matter for more than a year, however, the Commission conceded that:

Defining vanity numbers is a daunting undertaking. Some numbers are valued for their mnemonic equivalent, while other numbers are valued for, among other things, the fact that their digits are easily memorized.

*Report and Order*, 11 FCC Rcd at 2498 (1996). And so the 888 set-aside, a temporary measure, was adopted, and the Commission sent its staff back to the drawing board where (at least insofar as the vanity issue is concerned) they have remained ever since.<sup>2</sup>

12. The Commission's inability to define "vanity number" and find a regulatory solution is actually not surprising. By using the term "vanity" to describe telephone numbers that are extremely important tools of business and commerce—in the case of many businesses (e.g., 1-800-FLOWERS) the telephone number is, indeed, synonymous with the business—the Commission and the industry at once unwittingly mischaracterize the problem and too myopically seek the solution.

13. Consider how Webster defines the word:

1. any thing or act that is vain, futile, idle, or worthless
2. the quality or fact of being vain, or worthless; futility
3. the quality or fact of being vain, or excessively proud of oneself or one's qualities or possessions; self-conceit
4. a thing about which one is vain or conceited
5. emptiness, worthlessness

14. A former high school athlete who, now in middle age, puts "NR1 JOCK" on his automobile license plate might be said to be vain. He is likely indulging his pride and conceit, he has something that is largely worthless and, depending on what it is he is trying to accomplish, probably futile. This picture does not even begin to capture the situation of a business enterprise

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<sup>2</sup> Significantly, for purposes of developing the interim 888 set-aside measure, the Commission found it useful to simplify the definition of a vanity number. "For purposes of this *Report and Order*, we are using the term 'vanity number' to describe a number that a subscriber requests be made unavailable during the initial 888 reservation period." 10 FCC Rcd at 2496 n.4. *See also*, *Second Report and Order*, 12 FCC Rcd 11162, 11162 n. ("For purposes of this proceeding, vanity numbers have been defined as all equivalent 888 numbers designated for protection by existing commercial 800 subscribers."). The Commission also limited the scope of interim protection on the basis of a simple, easily applied classification: "[T]he only numbers ineligible for such treatment are 888 numbers equivalent to personal or residential 800 numbers. We find that, in contrast to other 800 subscribers, personal subscribers have no commercial interest in their 800 numbers that competitors might seek to undermine." *Report and Order*, 10 FCC Rcd at 2498.

that seeks to increase its recognition and facilitate the public's ability to contact it. Advertising and promotion, in the world of commerce, are not vain; they are essential. Making it easier and less costly for customers and potential customers to contact a business enterprise is far from futile or worthless.

15. The power of words—and the choice and use of certain specific words—must not be underestimated. ResponseTrak submits that the appellation “vanity number” has subconsciously misdirected the discourse and deliberation of toll free regulatory policy. The Commission hopes to arrive at an objective definition of a vanity number, apparently in the belief that it can then establish regulatory protections for the holders of vanity numbers, while allowing all other numbers to be assigned on an unfettered basis. While this may at first seem plausible, on closer examination it is at least a partial prejudgment of the issue.

16. Consider, for example, set-asides and replication, the potential regulatory protection scheme whereby an 888 or 877 number that corresponds to an 800 vanity number would be set aside and not assigned to a new subscriber but rather would be assigned to the holder of the existing 800 number. Clearly the Commission would not approve the absurd result in which the majority of the numbers in the new SAC are set-aside or replicated. There is an inherent incentive and pressure, therefore, for the Commission to artificially narrow the definition of a number so as not to have to extend protection to too many numbers, which would defeat the purpose of opening the new SAC.

17. The correct regulatory policy, and one that is truly in the public interest, will never be arrived at by attempting to define vanity numbers. That process misses the point, namely, that there are many existing subscribers of toll free numbers who will be significantly and adversely affected if their toll free numbers are duplicated in other SACs. The reality of this problem and the urgent need for a solution is not dependent on the nature and makeup of specific numbers or whether they fall within some regulatory definition of “vanity numbers.” The essence

of the problem and the basis for a workable, efficient, equitable solution is to be found by examining and understanding how toll free numbers—any toll free number, not just one that might be called a vanity number—are used by subscribers.

18. Not all subscribers use toll free numbers for the same reasons or in the same ways. This distinction is important. An existing toll free subscriber's need for protection from duplication in other toll free SACs (and the nature and extent of protection needed) does not depend on whether the number "spells" something, nor does it depend on any other inherent characteristic of the number itself. It depends on the way the subscriber uses the number.

**B. Understanding the Business Use of Toll Free Numbers**

19. AT&T first introduced toll free service in the late 1960's as a business service. Toll free services were, from their inception and until recently, predominantly, if not exclusively, business oriented services. Following the introduction of portability in 1993, other uses have emerged. Customers began to request toll free service for personal and residential use. Even certain business applications took on a different nature. Toll free numbers were used for pagers, voice mail, and other "access" functions. These new uses precipitated the rapid depletion of numbers from the 800 SAC.

20. The distinguishing characteristic between the traditional business uses of toll free service and the more recent personal, residential, and access uses, is the scope of the universe with whom the toll free subscriber seeks to communicate. The traditional business use was a public use, aimed at the universe of existing and potential customers. The numbers (and the fact that they were "toll free") were heavily advertised. The opposite is most often the case with the newer uses. For example, a pager number is communicated on a one-to-one basis to those whom the subscriber wants to have the number. In some cases this may be several or a large number of potential callers, but it is a finite number, and substantially smaller than the universe reached through mass advertising and promotion. Often the number may not be distributed externally at

all. For example, a business may place an 800 number on its voice mail or computer network host so that a limited number of employees can access these systems from various locations when traveling. Or a family may obtain an 888 number so that a child away at college can call home on a toll free basis.

21. When used in the traditional business mode, a toll free number facilitates public, many-to-one communications. It is, in essence, the inverse of communications modes such as broadcasting and cable television, examples of point-to-multipoint or one-to-many methods of communication. Most personal, residential, and access applications require private, one-to-one or few-to-one communications. This distinction has significant ramifications that should be considered in developing policies designed to protect existing toll free subscribers when new SACs are opened. The duplication of a many-to-one toll free number in a new SAC presents special concerns. The Commission correctly assessed this when it initially took up consideration of the so-called vanity number issue:

As new toll free codes become available, a question arises as to whether the current holder of an 800 vanity number should have a right of first refusal or other priority on the equivalent number drawn from a new toll free code. Companies may have a financial interest in being able to reserve these equivalent vanity numbers because of their high visibility, consumer recognition, and the confusion that may ensue . . . . Some 800 number holders may have invested substantial resources in advertising the number and establishing a reputation for it.

*NPRM*, 10 FCC Rcd at 13701-13702. It should be apparent, however, that interest in avoiding public confusion and protecting an investment is not limited to numbers that spell out a company name or product. These same considerations apply, to one degree or another, to any business that has publicly used and promoted its 800 number for a many-to-one use, even if the number is simply seven random digits with no inherent meaning other than identifying the subscriber's line.

22. These same concerns do not exist, or at least are astronomically diminished, in the case of one-to-one and few-to-one applications. In situations where the toll free number is not published or is published to a finite number of known contacts, there is no high visibility and

hence no vested interest in the number. This is not to say some confusion may not result, creating some minor inconvenience. But in virtually all cases this will be no greater than, and probably far less than, the problem that occurs when an area code is overlaid or split. In fact, virtually every seven digit phone number in use today is potentially duplicated in every other area code, and this has never been perceived as a major problem.

23. The problem in toll free service arises because of the relatively few “area codes” (SACs) and the high visibility resulting from heavy promotion of both the toll free numbers themselves and the fundamental concept of toll free service. These concerns do not apply to toll free numbers that are used in a more private and/or personal way and are not widely published or highly visible.

**C. Formulating a Workable Toll-Free Number Protection Policy**

24. The fundamental distinction between public many-to-one uses and private one-to-one (few-to-one) uses is the foundation upon which a workable, efficient, and equitable policy for protecting subscribers’ investment in toll free numbers should be built. The essence of the regulatory solution is that the public subscribers require protection while the private subscribers do not. The Commission recognized this when it limited the scope of 888 set-aside protection to commercial subscribers on the ground that “personal subscribers have no commercial interest in their 800 numbers that competitors might seek to undermine.” *Report and Order*, 11 FCC Rcd at 2498. If the concept is refined and more accurately stated, however, it becomes apparent that the relevant distinction is not so much commercial versus personal as it is public versus private.

25. Consider the similarities and differences between these two categories of toll free number use. Subscribers in both categories take advantage of two important characteristics of toll free numbers: (1) the pre-arranged reversal of toll charges, and (2) service provider portability. Subscribers of toll free numbers for public, many-to-one applications, however, exploit another important characteristic of the toll free number, namely, public recognition. For most traditional

business toll free subscribers, in fact, public recognition of their firm's toll free number is often significantly *more* important than portability. Number recognition is to the direct-response marketing community what "location, location, location" is to real estate. It facilitates ready identification of and ease of access to the firm. Unlike toll free billing and number portability, the public recognition characteristic of toll free usage is not inherent in the toll free infrastructure; rather, it is a value created by the subscriber's investment in and use of the number and, in some cases, the subscriber's creation of intellectual property associated with the number.

26. For the reasons set forth in Sections IV.A through IV.C, there are two important concepts that should be at the foundation of the Commission's toll free number policy:

- Protection of existing toll free number subscribers should extend to public many-to-one uses, and not to private one-to-one or few-to-one uses.
- Protection must be extended to all subscribers for legitimate public many-to-one applications. Entitlement to protection depends on the nature of the use, not the characteristics of the number.

In the following section, ResponseTrak proposes a specific regulatory framework in which these general policy concepts can be efficiently and equitably implemented.

## **V. THE ENTERPRISE SOLUTION**

### **A. The Need to Segregate Usage Types**

27. The difficulties experienced today with protecting the investment of existing toll free subscribers when a new SAC is opened is due in large measure to the commingling of public many-to-one uses with private one-to-one uses in the same toll free SAC. The problem is not that an 800 number is duplicated in another toll free SAC; rather, the problem is the *way* in which that toll free number may be used in the other toll free SAC. If a business publishes an 800 number, the duplication of that number in the 888 SAC for public many-to-one use presents

many potential problems, *e.g.*, significant loss of revenue, misdials, customer confusion, even potential theft of service and infringement of intellectual property rights.

28. These problems do not exist, or are substantially less pronounced, if the duplicate number is used for private one-to-one or few-to-one applications. For example, if my business is 1-800-WIDGETS, I certainly do not want a competitor using 1-877-WIDGETS to hawk his wares. I may not, depending on the circumstances, want *any* business using the 1-877 replica in a highly public way, because of the loss of revenue, public confusion, cost, and inconvenience that is likely to result even in the absence of bad intent. On the other hand, the impact, if any, on my investment in 1-800-WIDGETS would be *de minimis* if a businesswoman obtained 1-877-943-4387 for use on her pager, or if a father used it on his residential line so that his daughter could call home from college.

#### **B. Enterprise Numbers: The Solution**

29. The logical approach, then, is to segregate the two distinct types of toll free use, *i.e.*, public many-to-one versus private one-to-one and few-to-one applications, into different SACs. ResponseTrak now proposes a specific regulatory framework to accomplish this in a simple, efficient, and equitable manner. Numbers used for public many-to-one applications would be called Enterprise Numbers, while numbers used for private one-to-one and few-to-one applications would be called Communicator Numbers. Under the regulatory scheme proposed by ResponseTrak, when requesting a new toll free number, a customer would certify to the RespOrg which use it proposes, and the RespOrg would then assign either an Enterprise Number or a Communicator number, as appropriate. Enterprise Numbers would be assigned from the 800 and 888 SACs, while Communicator Numbers would be assigned out of the 877 SAC. Future SACs would be allocated to either Enterprise or Communicator, depending on projected needs.



(1) The Original Enterprise Number

30. ResponseTrak's Enterprise Number solution actually has a basis in the history of telephony. As early as the 1950's AT&T provided a service known as "Enterprise" numbers for its business and commercial customers. Enterprise numbers (or Zenith numbers in some areas) were 4-digit, operator-assisted, pre-approved, collect, long-distance, telephone numbers. They were expressed in the format: "Enterprise XXXX". To place a call to an Enterprise number, the caller dialed the long-distance operator and asked for Enterprise XXXX. The operator would check a flip-chart to find the translation number, and would complete the call to the actual number, but reversing the charge to the called party without asking that the charges be accepted. Calls to Enterprise numbers thus worked essentially the same as 1-800 calls do today. The call went through with the called party paying for it on his or her regular line. The only difference was the call could only be placed with the assistance of a long-distance operator.

31. A businesses desiring an Enterprise number went to the phone company and the number was assigned. It was circulated to all the various telephone companies so that operators everywhere knew what number to actually connect when a particular Enterprise number was requested. Operators had all the very common Enterprise/Zenith numbers (such as airline reservations systems and hotel reservation systems) in their flip chart of frequent numbers. If it was a less common Enterprise/Zenith number, the long distance operator put the caller on hold and made an inquiry of the 'Rate and Route Bureau' before routing the call.

32. The Enterprise Number was a business service. The functionality it offered, allowing toll free access to a business by the public at large, was required only in a commercial context. Collect calling in a noncommercial context was handled on a call-by-call basis with the operator securing the consent of the called party before connecting that particular call. Thus, Enterprise Numbers historically were used for public many-to-one "toll free" applications, while private one-to-one and few-to-one "toll free" applications were handled as collect calls on a call-

by-call basis. In both cases, however, the called party gave *permission* for the caller to reverse the charges. In the case of the Enterprise Number the permission was granted to the public at large on a pre-arranged basis; while in the case of a collect call, the permission was given to specific individuals on a call-by-call basis.

33. Eventually the Enterprise Number was replaced by 800 service, introduced by AT&T in the 1967. The essential nature of 800 service was the same as Enterprise Numbers: subscribers, usually commercial enterprises, published an 800 number that allowed the public at large to contact them on a toll free basis. The only significant functional difference from the caller's point of view was the automation of the process. Toll free calls could now be placed on a direct dial basis with no need for operator assistance. Non-800-Service collect calls continued as before, *i.e.*, with operator (or, more recently, automated) assistance to secure the permission of the called party for each call. The essential nature of the two services remained the same. 800 Service was used for public many-to-one communications, and the called party granted permission to the public at large in advance. Collect calls were used for private one-to-one and few-to-one applications, and the called party granted (or denied) permission on a per call basis.

34. It is only within the past five years or so that subscribers started obtaining and using toll free numbers for private one-to-one and few-to-one applications such as personal, residential, or access services. Automation, reduced prices, competitive provisioning of toll free service, and service provider portability of toll free numbers are the more important of the many business, technical, and regulatory factors that converged, making personal or private use of toll free service practical. It is only recently, therefore, that different types of subscribers have been using the same telecommunications service (1-800 and 1-888 toll free service) to accommodate two fundamentally different telecommunications needs—public many-to-one versus private one-to-one and few-to-one toll free communications. As before, however, the way in which subscribers use the service is fundamentally different. Subscribers desiring public, many-to-one

communications widely publish their toll free numbers and, by so doing, grant *permission* to the public at large to call on a reversed charges basis. Subscribers desiring private one-to-one (few-to-one) communications, however, do not widely publish their toll free numbers; they give the number only to those particular persons to whom they want to grant *permission* to call on a reversed charge basis.

(2) The New Enterprise Number

35. The historical concept of Enterprise Numbers provides a foundation for a simple, efficient, effective, and equitable regulatory policy for the protection of existing toll free subscribers' investment in their numbers when new toll free SACs are opened. Here are the basic blocks that make up that foundation:

- There is a fundamental difference in the way toll free service is used by two basic categories of subscribers, those requiring public many-to-one applications and those requiring private one-to-one (few-to-one) applications. The most essential aspect of this difference is in the class of callers to whom permission is granted to use the subscriber's toll free number, thereby "reversing" the charges—the many-to-one subscribers grant permission to the public at large, while the one-to-many and few-to-many subscribers privately grant permission to a selected group of callers.
- The adverse impact on existing subscribers' investment in their toll free numbers when a new toll free SAC is opened is (a) experienced almost exclusively by those using the numbers for public many-to-one applications, and (b) directly related to the commingling of the fundamentally different uses within the same toll free SACs.
- Existing subscribers can be substantially protected by segregating the two fundamentally different uses into different SACs, *i.e.*, by *not* commingling.

ResponseTrak strongly urges the Commission to segregate or partition these two fundamentally different uses into separate SACs. ResponseTrak now proposes a specific regulatory scheme for accomplishing this, borrowing from the historical Enterprise Numbers.

## **VI. IMPLEMENTING THE ENTERPRISE SOLUTION**

### **A. Determining Eligibility for Enterprise and Communicator Numbers**

36. This proposal is as simple in practice as it is in theory. Enterprise Numbers will be kept in one or more SACs and Communicator Numbers will be kept in one or more different SACs, and never the twain shall meet. When a subscriber requests a new toll free number, the RespOrg will consider the proposed application for the number. If it is a public, universal permission, many-to-one application, the number will be assigned from one of the Enterprise Number SACs. If it is a private, limited permission, one-to-one or few-to-one application, the number will be assigned from one of the Communicator Number SACs. The following table sets forth the criteria on which this determination would be made.

<b>ENTERPRISE – 800, 888, ?</b> Assigned only if <u>all</u> conditions below are met.	<b>COMMUNICATOR – 877, 866, ?</b> Assigned if any <u>one</u> condition below is met.
- For commercial, charitable, educational, or philanthropic enterprises; including profit, not-for-profit, and non-profit subscribers.	- For private, personal, residential, or access communications; regardless of the nature of the subscriber (business or otherwise).
- Application must allow "many-to-one" caller accessibility. Permission to call collect is automatic and extended to the public at large. PINs are not permitted.	- For "one-to-one" or "few-to-one" uses. Permission to call is restricted by the subscriber. PINs may be used.
- For universal access by all members of the public located in the access area that has been provisioned. May be listed with 800-Service directory assistance. May be published broadly to or for the general public.	- For limited access by individuals, groups, or other entities with whom, for whom, or to whom the subscriber has communicated the number. May not be published to or for the general public.

37. The definition of Enterprise and Communicator Numbers, then, turns not simply on whether the number is for business or not, but rather on how the number is used. The key is the public many-to-one communication and the unrestricted granting of permission to call collect to the general public. Thus, non-business applications may very well qualify as bona fide Enterprise uses, e.g., use of the numbers by charitable or educational organizations to facilitate

many-to-one communications. By the same token, some business uses will be deemed Communicator, e.g., a toll free number used to access a voice mail system or a pager.

**B. The Specifics of the Enterprise Solution**

38. Set forth below are some specific details regarding implementation of the Enterprise/Communicator solution:

- There will be two categories of toll free numbers: Enterprise Numbers (to be assigned from the 800 and 888 SACs) and Communicator Numbers (to be assigned from the 877 SAC). Future SACs will be assigned to either Enterprise or Communicator, depending on projected number requirements.
- Enterprise Numbers will be assigned only to subscribers proposing public many-to-one applications, and Communicator Numbers will be assigned only to subscribers proposing private one-to-one (few-to-one) applications.
- When a RespOrg contracts with a customer for a number, it will require the customer to certify its proposed use, and the number will be assigned from the appropriate SAC based on that certification. The customer will agree to only use the number in the manner certified [i.e., either public many-to-one or private one-to-one (few-to-one)].
- Any tariff pursuant to which numbers are assigned from the SMS database, and any contract or tariff pursuant to which toll free service is provided shall contain express provisions requiring compliance with the Enterprise/Communicator restrictions within the applicable SAC.
- Existing subscribers of 800 or 888 numbers where the use meets the Enterprise definition will be given immediate right of first refusal for installation of the corresponding 888 or 800 "replicas" still suppressed or set

aside. (This aspect of ResponseTrak's solution is discussed in more detail in Section VI.C, below.)

- Subscribers of bona fide, existing 800 and 888 Enterprise applications may elect to continue use of numbers assigned, and/or subscribe to additional or replacement numbers in the Enterprise group.
- Existing 800 and 888 Communicator applications must be moved to 877, 866, or other non-Enterprise SACs. Procedures and timing to be followed would be similar to those used when existing "regular" area codes are split, adding a new area code. Moves will be staged so as not to cause undue hardship on carriers, RespOrgs, subscribers, users, or other parties.
- Following appropriate transitional periods, 800 and 888 numbers formerly used for Communicator applications would be released to the pool of available Enterprise Numbers.
- Should a subscriber to an Enterprise Number also require a toll-free number for a Communicator application, the subscriber may not use the Enterprise Number for the new purpose. The subscriber must request assignment of a new Communicator Number for the new purpose.
- When the original use for which either an Enterprise Number or a Communicator Number was requested changes such that the use no longer meets conditions for that class of number, then the subscriber must retire the number and release it back to the pool of available numbers. As an alternative, the subscriber may simply use the number for another application that qualifies for the class. In other words, when a number is no longer needed, it must be released following normal procedures already in place.

- Should a subscriber to a Communicator Number also require a toll-free number for a bona fide Enterprise application, the subscriber may not use the Communicator Number for the new purpose. For example, a number assigned to a personal pager cannot suddenly be treated as an Enterprise Number and published. That use may well conflict with a similar number already in use as an Enterprise Number, or prevent the proper use of a similar Enterprise Number yet to be assigned. The subscriber must request assignment of a new Enterprise Number for the new purpose.

**C. Replication and Right of First Refusal**

39. Under the ResponseTrak solution, it is not necessary to adopt replication or right of first refusal schemes each time a new toll free SAC is opened. The essence of the solution is that, by segregating Enterprise and Communicator numbers into different SACs, the adverse impact of duplicating numbers is greatly reduced. There will, however, continue to be multiple Enterprise Number SACs (800 and 888 initially), and the potential problems of duplication, customer confusion, etc., are not entirely eliminated. ResponseTrak recommends the following method for protecting users of Enterprise numbers.

40. First, any bona fide Enterprise number user will have the right of first refusal on the replica of its number in any other Enterprise SAC. A reasonable period of time should be allowed to claim this right, measured from adoption of the new rules in the case of currently unassigned replicas. In the case of toll free numbers currently assigned, the right of first refusal will run for a reasonable period of time after the number is released by the current holder. If two replicas are currently assigned to two bona fide Enterprise number users, each will retain its number, but the right of first refusal for the replica in future Enterprise SACs will extend to the one who was first in time. A few examples will help to clarify this:

- Example 1: Company A has, and uses on an Enterprise basis, the number 1-800-WIDGETS. Subscriber B uses the corresponding 888 number on a Communicator basis for a pager. Upon adoption of ResponseTrak's solution, Subscriber B will be required to migrate to an 877 number, subject to a reasonable transition period. Company A will have a right of first refusal to claim the 888 replica.
- Example 2: Company A has, and uses on an Enterprise basis, the number 1-888-WIDGETS. Subscriber B uses the corresponding 800 number on a Communicator basis for a pager. Upon adoption of ResponseTrak's solution, Subscriber B will be required to migrate to an 877 number, subject to a reasonable transition period. Company A will have a right of first refusal to claim the 800 replica. (Note the reversal here, i.e., an 888 Enterprise subscriber claiming right of first refusal on an 800 replica. The need for, and hence entitlement to, replication protection is not based on longevity, except as between two bona fide Enterprise users, but rather on the Enterprise nature of the use.
- Example 3: Company A has, and uses on an Enterprise basis, the number 1-800-WIDGETS. The corresponding 888 number is not assigned or is in the 888 set-aside pool. Upon adoption of ResponseTrak's solution, Company A will be entitled to immediately claim the 888 replica.
- Example 4: Company A has, and uses on an Enterprise basis, the number 1-800-WIDGETS and its 888 replica. The Commission decides to open a new Enterprise number toll free SAC. Company A will, for a reasonable period of time, have a right of first refusal to claim the corresponding number in the new toll free SAC.
- Example 5: Company A has, and uses on an Enterprise basis, the number 1-800-WIDGETS. Company B has and uses the corresponding 888 number on an Enterprise basis (but does not publish the number as WIDGETS or otherwise improperly interfere with Company A). Both companies will retain their respective number. Upon the opening of a new Enterprise number toll free SAC, the right of first refusal will go to the Company who was first in time.

41. There is necessarily some degree of inefficiency in replication protection, but this must be balanced with the Commission's obligation to protect the investment of existing commercial users' investment in their toll free numbers. While the Commission need not, and should not, set itself up as an arbiter of intellectual property disputes, unfair competition, business interference, or similar disputes, it is nonetheless incumbent upon the Commission to fashion a regulatory structure for toll free numbers that is consistent with and even facilitates



these fundamental legal protections of business. *See, generally*, the discussion at pages 9-18 of the November 1, 1995 *Comments of the Direct Marketing Association* in the above-captioned proceeding.

42. ResponseTrak's proposal for right of first refusal for Enterprise number holders strikes the proper balance. First, by segregating Enterprise and Communicator numbers into separate SACs and extending the right of first refusal exclusively to Enterprise users, much of the inefficiency is reduced while still affording replication protection to those who legitimately need it. Further, by extending protection to all Enterprise users, rather than trying to artificially define "vanity" numbers or some other limited class of public, many-to-one users, the Commission avoids the risk of depriving legitimate public commercial users needed protection. The proposal is consistent with, and even complements, applicable business, competition, and intellectual property laws. Finally, based on the experience with the 888 set-aside pool, the number of Enterprise users likely to seek replication is not so great as to create inefficiency sufficient to outweigh the benefits of the proposal.

## **VII. THE EQUITY AND LEGALITY OF RESPONSETRAK'S PROPOSAL**

43. Sections 1 and 251(e) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.C.C. § 151 & 251(e)(1), require the Commission to ensure the efficient, fair, and orderly allocation of toll free numbers. Section 201(b) of the Communications Act further provides that "any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful," 47 U.S.C. § 201(b); and Section 202(a) of the Act prohibits "unjust or unreasonable discrimination" in the provision of "like communication service[s]." 47 U.S.C. § 202(b). The ResponseTrak solution fulfills the statutory admonitions. It is equitable, just, reasonable, efficient, and nondiscriminatory.